

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

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WASHINGTON, D. C. 20001



July 30, 1993

IN REPLY REFER TO:
LCD:L&O:LNG:lmg
(93-192-L)
(LCD-7795)

Lenwood Johnson
Commissioner, ANC 1-A
627 Columbia Road, N.W.
Washington, D.C. 20001

Joan Mayes Gillison
Commissioner, ANC 1-A
3431 14th Street, N.W.
Washington, D.C. 20010

Re: May an Advisory Neighborhood Commission remove its officers on a vote of no confidence before their terms expire?

Dear Commissioners Johnson and Gillison:

This is in response to your May 23, 1993 letter to the Corporation Counsel in which you seek the advice of this Office concerning whether your removal as chairperson (Johnson) and vice-chairperson (Gillison) of Advisory Neighborhood Commission (ANC) 1-A on April 28, 1993 was in accordance with applicable law. For the reasons stated below, I conclude that your removal from office was legally improper.

ANC 1-A has 10 commissioners. The minutes of the January 13, 1993 meeting of ANC 1-A indicate the Lenwood Johnson was elected to the office of chairperson, and that Joan Gillison was elected to the office of vice-chairperson. The minutes of the April 28, 1993 meeting of ANC 1-A indicate that a number of the commissioners were dissatisfied with the "leadership" of the chairperson and the vice-chairperson. Various commissioners charged either the chairperson or the vice-chairperson, or both, with having expressed "distrust" of other commissioners, having "cursed" at other commissioners, having intruded into the business of another commissioner's single member district without consultation, having been "combative" and "divisive," having misrepresented the views of the Commission, and having been critical of the "Old Commission." This general criticism culminated in a roll call vote on whether the commissioners had "confidence" or "no confidence" in the chairperson, vice-chairperson, secretary, and treasurer. The vote on the chairperson was

7 no-confidence votes and 3 confidence votes.¹ The vote on the vice-chairperson was 6 no-confidence votes, 3 confidence votes, and 1 abstention. Thereafter, on the basis of this no-confidence vote, the commissioners voted 7 to 1 to remove the chairperson and the vice-chairperson from office, and then proceeded to elect a new chairperson (Commissioner Beverly Wheeler) and a new vice-chairperson (Commissioner Mack James).

Section 14(e) of the Advisory Neighborhood Commissions Act of 1975, as amended, D.C. Code § 1-262(e) (1992), provides in pertinent part that "[e]ach Commission shall elect from among its members at a public meeting of the Commission held in January of each year a Chairperson, vice-chairperson, secretary, and treasurer." Thus, the statute contemplates that ANC officers will serve for a term of one year. There are, however, no statutory provisions addressing the removal of ANC officers prior to the expiration of their one-year terms. ANC 1-A's by-laws, revised as of May 27, 1992, provide in Article IV, Section 2 that "[t]he officers are elected to serve for one year or until their successors are elected, and their term of office begins upon election."² These by-laws do not otherwise address the subject of removal of officers before the expiration of their one-year terms. By letter dated June 11, 1993, to Leo Gorman of this Office, you (*i.e.*, Commissioner Johnson) stated that "we agreed by resolution on February 13, 1993 to govern ourselves by the 1993-1994 ANC Manual." Even assuming the May 27, 1992 ANC 1-A by-laws were not in effect on April 28, 1993, and the ANC Manual governed the procedures of ANC 1-A, the ANC Manual likewise does not specifically address the subject of removal of officers prior to the expiration of their one-year terms.

Under § 14(e) of the Advisory Neighborhood Commissions Act of 1975, as amended, D.C. Code § 1-262(e) (1992), "[w]here not otherwise provided, the procedures of...ANCs shall be governed by Robert's Rules of Order." In regard to the removal of officers during

¹ The secretary and the treasurer received votes of confidence from the ten commissioners, with the exception of 1 no-confidence vote and 1 abstention for the secretary, and 1 abstention for the treasurer.

² Robert's Rules of Order § 55 (at page 482) makes clear that the phrase "or until their successors are elected" (emphasis in original) in an organization's by-law dealing with the terms of office of officers is not intended to mean that officers may be deposed during their terms of office for any reason whatsoever; rather, this phrase is intended to indicate that at the end of their normal terms of office they may continue to serve until their successors are elected. This is a standard provision whose purpose is to avoid a vacuum in leadership in the event there is a delay in the election of new officers. See generally, 3 McQuillin, Municipal Corporations §§ 12.105 and 12.110 (3rd ed. 1990).

their terms of office, Robert's Rules of Order states the following:

Except as the bylaws may provide otherwise, any regularly elected officer of a permanent society can be deposed from office for cause--that is, misconduct or neglect of duty in office--as follows:

If the bylaws provide that officers shall serve "for years or until their successors are elected," the election of the officer in question can be rescinded and a successor can thereafter be elected for the remainder of the term. The vote required for removing the offender from office in such a case is the same as for any other motion to Rescind....

Robert's Rules of Order, Newly Revised (1970), § 60, at p. 555. Emphasis in part original; in part added.³

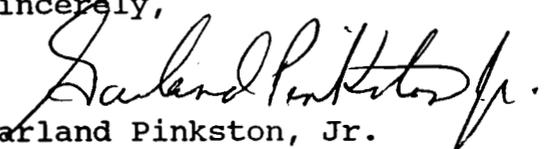
Because neither ANC 1-A's by-laws nor the ANC Manual provide otherwise, ANC 1-A was required to follow Robert's Rules of Order in the removal its chairperson and vice-chairperson prior to the expiration of their terms of office. Under Robert's Rules of Order, removal of these officers had to be for "cause." Substantively, the term "cause" implies "a reasonable ground of demotion or removal as distinguished from a frivolous or incompetent ground." 4 McQuillin, Municipal Corporations § 12.230 (3rd ed. 1992). See also, Id., at §§ 12.326 and 12.327. "[M]ere political bias or personal dislike" by the person or persons having the power of removal is not cause. Id., at § 12.234. Procedurally, removal for "cause" based on misconduct or neglect of duty involves a process in which: (1) one or more specific charges of misconduct or neglect of duty are presented against the person to be removed from office; (2) the person is afforded a reasonable opportunity to respond to the charge or charges; (3) there is agreement by a majority of the members of the organization that the charge or charges are true; and (4) there is agreement by a majority of the members of the organization that the person should be deposed from office on the basis of the charge or charges that have been determined to be true. Id., at §§ 1230.10.

³ See § 34 of Robert's Rules of Order (at pages 256-258) for a discussion of the procedural requirements relating to a motion to rescind. There (page 258), it is stated that, with exceptions not relevant here, a motion to rescind requires "(a) a two-thirds vote, or (b) a majority vote when notice of intent to make the motion, stating the complete substance of the proposed change, has been given at the previous meeting or in the call of the present meeting, or (c) a vote of a majority of the entire membership--whichever is most practical to obtain."

In the instant case many of the criticisms directed at the chairperson and the vice-chairperson by various commissioners at the ANC 1-A meeting on April 28, 1993, can not reasonably be characterized as charges of misconduct or neglect of duty, but rather were expressions of divergent points of view of a political nature. Moreover, with respect to a criticism that could possibly be characterized as a charge of misconduct, namely cursing at other commissioners, there is no indication in the minutes that a majority of the commissioners agreed with such charge, or any other criticism that could possibly be characterized as a charge of misconduct or neglect of duty in office. Thus, the process employed by ANC 1-A on April 28, 1993, to remove the chairperson and vice-chairperson from office cannot be said to have been in compliance with Robert's Rules of Order.

For these reasons, I conclude that the removal of the chairperson and vice-chairperson of ANC 1-A from office on April 28, 1993, was not in compliance with applicable law. Since your removal as chairperson and vice-chairperson, respectively, was unlawful, you are entitled to reassume these offices, and the persons elected to replace you, namely Commissioners Wheeler and James, have no legal authority to continue acting as chairman and vice-chairman, respectively, of ANC 1-A.⁴

Sincerely,



Garland Pinkston, Jr.
Deputy Corporation Counsel
Legal Counsel Division

cc: Beverly Wheeler
Commissioner, ANC 1-A

Mack James
Commissioner, ANC 1-A

The Honorable Harold Brazil
Chairman, Committee on Government Operations
Council of the District of Columbia

⁴ This conclusion does not mean that the acts of the persons who were elected to serve as chairman and vice-chairman of ANC 1-A on April 28, 1993 are without validity. These persons had de facto authority to act, and therefore their actions are valid. See 3 McQuillin, Municipal Corporations §§ 12.102 and 12.106 (3rd ed. 1990).

Regena Thomas
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